

AN ORDINANCE BY COUNCILMEMBERS KWANZA HALL
AND HOWARD SHOOK AS SUBSTITUTED BY THE FINANCE AND EXECUTIVE
COMMITTEE

**AUTHORIZING THE MAYOR TO TRANSFER THE
PROPERTY LOCATED AT 695 PONCE DE LEON AVE,
N.E. ALSO KNOWN AS CITY HALL EAST TO THE
ATLANTA DEVELOPMENT AUTHORITY
PURSUANT TO AN ASSIGNMENT AND
ASSUMPTION OF PURCHASE AND SALE
AGREEMENT; TO AUTHORIZE THE TRANSFER OF
THE CONTRACTS ASSOCIATED WITH THE
PROPERTY; AND FOR OTHER PURPOSES.**

WHEREAS, Ordinance 04-O-1892 which was adopted by Council on November 1, 2004 and approved by the Mayor on November 5, 2004 surplused the property known as City Hall East; and

WHEREAS, in accordance with ordinance 04-O-1892 and in response to RFP FC-7636-03, the City entered into negotiations with Ponce Park, LLC for the sale and redevelopment of the above mentioned property; and

WHEREAS, due to a dramatic change in market conditions the City and Ponce Park, LLC were unable to close on the property under the current terms of the agreement and development agreement; and

WHEREAS, the Atlanta Development Authority (“ADA”) is the economic development arm of the City of Atlanta; and

WHEREAS, it is in the best interest of the City to transfer the property and the contracts associated with the property to ADA in exchange for payment from ADA in an amount of not less than \$12,500,000; and

WHEREAS, ADA is better situated to handle the negotiations with Ponce Park, LLC or any successor.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1. That the property known as City Hall East and the contracts associated with City Hall East be transferred to ADA pursuant to the Assignment and Assumption of Purchase and Sale Agreement attached hereto as Exhibit "A".

Section 2. The Mayor is hereby authorized to execute the Assignment and Assumption of Purchase and Sale Agreement in substantially the form attached hereto as Exhibit "A" subject to such changes approved by the City Attorney, and to execute any other documents necessary to effectuate the Assignment and Assumption of Purchase and Sale Agreement.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the necessary quitclaim deeds to transfer the property to ADA in accordance with the terms of the agreement, and the payment of the purchase price of not less than \$12,500,000 shall be paid by ADA to the City upon the ADA's further transfer of the property to a third party.

Exhibit A

ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT (the "Agreement") is made this _____ day of _____, 2010, by and between THE CITY OF ATLANTA, a municipal corporation of the State of Georgia (the "Assignor") and THE ATLANTA DEVELOPMENT AUTHORITY, a public body corporate and politic and an instrumentality of the City of Atlanta (the "Assignee")

WHEREAS, Assignor and Ponce Park, LLC (together with its successors and assigns, the "Purchaser") entered into that certain agreement of purchase and sale dated November 8, 2005 (the "City Hall East PSA") for the purchase of approximately 16.21 acres of certain real property (the "Property") located in the City of Atlanta, Georgia and more particularly described on Exhibit A attached hereto and by this reference incorporated herein; and

WHEREAS, Assignor wishes to assign to Assignee, and Assignee wishes to assume, Assignor's rights and obligations under the City Hall East PSA with respect to the disposition of the Property, subject to the terms and conditions of this Agreement; and

WHEREAS, Assignor is entitled to assign its interests and rights pursuant to Section 18(D) of the City Hall East PSA; and

WHEREAS, in addition to Assignor's right to transfer the City Hall East PSA to Assignee under that agreement, O.C.G.A. § 36-37-6 (e)(2)(D) authorizes Assignor to transfer ownership of the Property to Assignee; and

WHEREAS, simultaneously with the execution of this Agreement, Assignor will execute a quitclaim deed (the "Deed") transferring ownership of the Property to Assignee in accordance with this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. **ASSIGNMENT.** Assignor hereby assigns to Assignee all of its right, title and interest in and to the City Hall East PSA in connection therewith with respect to the Property, including any all other related documents (the "Related Documents") that have been executed between Assignor and Buyer in connection with the sale of the Property, said related documents listed on Exhibit B attached hereto and by this reference incorporated herein.

2. **ASSUMPTION.** Assignee hereby accepts the foregoing assignment. Assignee hereby assumes and agrees to pay, perform and be bound by certain covenants, terms and obligations contained in the City Hall East PSA (and Related Documents) to be

performed by Assignor under the City Hall East PSA (and Related Documents) on or after the date hereof with respect to the Property, subject to Section 5 of this Agreement. Assignee shall also be solely responsible for all obligations pursuant to Assignor's obligations under the City Hall East PSA, subject to Section 5 of this Agreement. Assignor shall deliver all correspondence written or in electronic format pertaining to the City Hall East PSA to Assignee and Assignee shall assume the responsibility of all correspondence and communication with the Purchaser. Notwithstanding anything to the contrary in this Agreement, with the exception of those specific obligations listed in Section 3 below, Assignor agrees that Assignee shall have the right to (i) waive any provision in the PSA or Related Documents, (ii) enter into an Amended and Restated Purchase and Sale Agreement with an Intended Purchaser in place of the current City Hall East PSA, or (iii) cancel any of the Related Documents as necessary in order to reach an agreement for the sale of the Property with an Intended Purchaser.

3. **TRANSFER OF OWNERSHIP OF PROPERTY BY ASSIGNOR TO ASSIGNEE.** Simultaneously with the execution of this Agreement, Assignor shall deliver to Assignee the Deed in the form attached hereto as Exhibit C and by this reference incorporated herein.

4. **SPECIAL OBLIGATIONS OF ASSIGNEE UNDER ASSIGNMENT.** In consideration for Assignor assigning all of its rights and interests under the City Hall East PSA, Assignee agrees to the following terms and conditions:

- a) Assignee shall have a binding purchase and sale agreement (the "Amended and Restated PSA") to sell the Property to Purchaser or other third party (Purchaser or such other third party hereinafter referred to as an "Intended Purchaser"), with said Amended and Restated PSA having an initial date of July 1, 2010 (the "Target Closing Date") for completing the sale of the Property (the "Closing"), but having a final Closing date no later than December 15, 2010 (the "Outside Closing Date"). The Amended and Restated PSA may be an amended City Hall East PSA or a new and separate contract.
- b) The Amended and Restated PSA between Assignee and the Intended Purchaser **must** include, and the Intended Purchaser **must** have complied with, a provision requiring the Intended Purchaser to deposit in an escrow account earnest money (the "Earnest Money") in the amount of _____ AND NO/100THS DOLLARS (\$_____) on or before April 29th, 2010, but in no event no later than May 15th, 2010, said Earnest Money once deposited to be non-refundable. **Notwithstanding anything to the contrary or contained herein, if the conditions under this Section 3 (b) have not been satisfied on or prior to May 15th, 2010, this Agreement shall automatically terminate with neither party thereafter having any further obligations under this Agreement.**

- c) The Amended and Restated PSA shall require any developer of the Property following Closing pursuant to the Amended and Restated PSA (whether it be the Intended Purchaser or not, "the Developer") to covenant and agree to set aside at least twenty percent (20%) of the total number of residential units for lease or sale at the Property to persons meeting the Affordability Criteria as defined and set forth on Exhibit F-1 to the Declaration and Agreement Concerning Development, Easements and Real Covenants, dated as of March 13, 2006, recorded in Deed Book 42138, Page 367, Fulton County, Georgia records (the "Declaration").
- d) The Amended and Restated PSA shall require the Developer to make available an area on the Property for the construction of a transit plaza for use by Atlanta Beltline, Inc., its successors, assigns, affiliated authority or other similar agency, and said developer shall maintain public access from the Property to the Beltline (as defined in the Declaration).
- e) Upon the Closing of sale of the Property by Assignee in accordance with the Amended and Restated PSA, Assignee shall immediately pay to Assignor the amount of _____ DOLLARS AND NO/100THS DOLLARS (\$ _____), said payment fully satisfying the amount owed to Assignor from Assignee under this Agreement.

4. CONTINUING OBLIGATIONS OF ASSIGNOR UNDER THE CITY HALL EAST PSA. (a) Notwithstanding anything to the contrary or contained herein, Assignor acknowledges and agrees to remain responsible and obligated to inspect, maintain, repair and perform any other acts as required by law with respect to those items listed on Exhibit D attached hereto and by this reference incorporated herein. Assignor and Assignee expressly acknowledge that the specific parameters pertaining to the items listed on Exhibit D may not be finalized as of the date of this Agreement and may change prior to the Closing; however, the parties agree to endeavor in good faith to set the exact parameters and the responsibilities of the parties with respect to those items listed on Exhibit D prior to the Closing.

b) Assignor hereby represents and warrants to Assignee that the Declaration has not heretofore been amended, restated, or otherwise modified and hereby covenants that the Declaration shall not, without Assignee's prior written consent, hereafter be amended, restated, or otherwise modified so long as this Agreement is in effect.

c) Assignor agrees to continue to pay for all maintenance costs associated with the operation, upkeep and use of the Property until (i) the Closing occurs or (ii) the earlier termination of this Agreement.

5. IMPACT FEES. Assignor, in its capacity as the City of Atlanta, agrees that Assignor will dedicate the lesser of the impact fees paid to the City associated with the Property or ONE MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,500,000.00) to projects within the immediate area of the Property. The

amount of impact fees shall be capped at an amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,500,000.00) worth of work or refunding, if a project is actually performed by the Intended Purchaser or Developer at the request or approval of the City of Atlanta.

6. **INDEMNIFICATION.** To the extent permitted by law, Assignor covenants and agrees to indemnify Assignee against any and all claims of liability from Purchaser or other third party arising under any provision of the City Hall East PSA, including any environmental claims arising prior to the Closing.

7. **TERMINATION OF AGREEMENT.** Unless otherwise agreed to in writing by the parties, if the Closing does not occur by 11:59:59 P.M. on December 31st, 2010, this Agreement shall automatically terminate and the parties shall have no further obligations under this Agreement.

8. **BENEFIT.** This Agreement is intended solely to benefit the parties and shall not create any liabilities to any other parties or expand any liabilities to any other parties except as specifically agreed to by such other party herein.

9. **SUCCESSORS AND ASSIGNS.** This instrument will be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Without limiting the foregoing sentence, Assignor agrees that Assignee shall be entitled to assign any or all of Assignee's rights under Section 4 (a) and Section 5 hereof to the Intended Purchaser, its successors and assignors.

10. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and by facsimile with the same effect as if the parties had all signed the same documents. All counterparts shall be construed together and shall constitute one agreement.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ASSIGNOR:

CITY OF ATLANTA, a municipal corporation of the State of Georgia

ATTEST:

Clerk, City of Atlanta

Mayor, City of Atlanta

APPROVED AS TO FORM:

City Attorney

Initial address for notices:

City Hall
55 Trinity Avenue
Suite 2400
Atlanta, Georgia 30303
Attn: _____
Telephone Number: (404) 330-_____
Telecopy Number: (404) 658-_____

With a copy to:

City of Atlanta Law Department
Suite 4100
68 Mitchell Street, S.W.
Atlanta, Georgia 30303
Attn: Adrian L. Jackson, Esquire
Telephone Number: (404) 330-6472
Telecopy Number: (404) 494-1642

ASSIGNEE:

THE ATLANTA DEVELOPMENT
AUTHORITY, a political
subdivision of the State of Georgia

By: _____

Name: _____

Title: _____

Exhibit A

Legal Description

Exhibit B

Related Documents

1. Declaration.
2. Performance Guaranty (as defined in the Declaration) as heretofore amended, restated or otherwise modified.
3. Completion Guaranty (as defined in the Declaration) as heretofore amended, restated or otherwise modified.

Exhibit C

Quitclaim Deed

Exhibit D

Continuing Obligations of the City of Atlanta under the City Hall East PSA

AN ORDINANCE

BY COUNCILMEMBER KWANZA HALL

AUTHORIZING THE MAYOR TO TRANSFER THE PROPERTY LOCATED AT 695 PONCE DE LEON AVE, N.E. ALSO KNOWN AS CITY HALL EAST TO THE ATLANTA DEVELOPMENT AUTHORITY; TO AUTHORIZE THE TRANSFER OF THE CONTRACTS ASSOCIATED WITH THE PROPERTY; TO AUTHORIZE THE MAYOR TO EXECUTE A QUITCLAIM DEED TRANSFERRING THE PROPERTY TO THE ATLANTA DEVELOPMENT AUTHORITY UPON THE CLOSING OF THE PROPERTY; AND FOR OTHER PURPOSES.

WHEREAS, Ordinance 04-O-1892 which was adopted by Council on November 1, 2004 and approved by the Mayor on November 5, 2004 surplused the property known as City Hall East; and

WHEREAS, in accordance with ordinance 04-O-1892 and in response to RFP FC-7636-03, the City entered into negotiations with Ponce Park, LLC for the sale and redevelopment of the above mentioned property; and

WHEREAS, due to a dramatic change in market conditions the City and Ponce Park, LLC was unable to close on the property under the current terms of the agreement and development agreement; and

WHEREAS, the Atlanta Development Authority ("ADA") is the economic development arm of the City of Atlanta; and

WHEREAS, it is in the best interest of the City to transfer the property and the contracts associated with the property to ADA; and

WHEREAS, ADA is better situated to handle the negotiations with Ponce Park, LLC or any successor.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1. That the property known as City Hall East and the contracts associated with City Hall East be transferred to the Atlanta Development Authority.

Section 2. The Mayor is hereby authorized to execute the necessary purchase sales agreements and any other documents necessary to effectuate the purchase and sales agreement.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the necessary quitclaim deeds to transfer the property to the Atlanta Development Authority in accordance with the terms of the agreement.